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No. 08-1314

IN THE

Supreme Court of the United States

DELBERT WILLIAMSON, ET AL.,

Petitioners,

v.

MAZDA MOTOR OF AMERICA, INC., ET AL.,

Respondents.

On Writ of Certiorari
to the Court of Appeal of California,
Fourth Appellate District, Division Three

BRIEF FOR *AMICUS CURIAE* JUVENILE PRODUCTS MANUFACTURERS ASSOCIATION IN SUPPORT OF RESPONDENTS

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STATEMENT OF INTEREST OF *AMICUS CURIAE*[1]

The Juvenile Products Manufacturers Association ("JPMA") is a national, not-for-profit organization that represents 95% of the prenatal to preschool industry. Formed in 1962, JPMA's members include more than 250 companies in the United States and North America. JPMA's member companies manufacture, import and/or distribute a wide range of infant products, including child restraint systems. JPMA's membership includes more than a dozen child restraint manufacturers.

JPMA has been recognized for its dedication to enhancing the safety of children's products. JPMA's leadership in juvenile product safety includes the development of a comprehensive Certification Program to help guide parents and other caregivers toward purchasing juvenile products that are built with safety in mind.

JPMA works with government agencies, consumer groups, and industry leaders on programs designed to educate consumers on the safe selection and use of juvenile products. *See, e.g.*, Consumer Product Safety Commission, 66 Fed. Reg. 39692, 39692 (2001) (noting that the Commission asked JPMA "to disseminate the message that caregivers should never leave a baby unattended in a tub of water").

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[1] Pursuant to this Court's Rule 37.6, counsel for *amicus curiae* certify that no part of this brief was authored by counsel for any party, and no person or entity other than *amicus* or its members made a monetary contribution to the preparation or submission of the brief. The brief is filed with the consent of the parties, whose consent letters have been filed with the Clerk.

JPMA has sponsored programs such as Safe & Sound For Baby and Baby Safety Month to keep safety-conscious parents informed.

JPMA has regularly provided comments to the National Highway Traffic Safety Administration ("NHTSA") in connection with rulemaking regarding child restraints. *See, e.g.*, 67 Fed. Reg. 63295, 63295 (2002) (noting that JPMA's comments "represented the views of child restraint system manufacturers"). As JPMA has made clear to NHTSA, "the number one priority of [child restraint] manufacturers is to increase the usage and more importantly the proper use of child restraint systems." 62 Fed. Reg. 7858, 7863 (1997).

INTRODUCTION AND SUMMARY OF ARGUMENT

This case concerns the preemptive effect of the Federal Motor Vehicle Safety Standards ("FMVSS"). Prior to the amendments enacted in 1989, NHTSA's seatbelt rule, FMVSS 208, *see* 49 C.F.R. § 571.208, gave vehicle manufacturers the option to install lap-only seatbelts (Type 1 belts) or lap/shoulder seatbelts (Type 2 belts) in rear seating positions. Under the 1989 amendments, NHTSA required Type 2 belts in rear outboard seating positions but preserved the option of installing either Type 1 or Type 2 belts in rear inboard seats.[2]

This case arises from an accident involving a 1993 Mazda MPV Minivan which was equipped with a

[2] The 1989 version of FMVSS 208 is no longer in effect. Since September 1, 2007, FMVSS 208 has required new cars to be equipped with Type 2 seatbelts in almost all rear seating positions.

lap-only belt in its middle row, rear aisle seating position. When the accident occurred, that seat was occupied by Thanh Williamson, the decedent. Plaintiffs' state-law tort suit seeks to hold Mazda liable for failing to install a lap/shoulder belt in the middle row inboard seat,[3] even though FMVSS 208 gave Mazda the option to install a lap-only belt in that seating position.

The meaning—and preemptive effect—of the 1989 revisions to FMVSS 208 cannot be determined by simply considering the amendment itself. The 1989 changes represent but one in a series of adjustments to the 208 standard, and that standard itself is but one in a series of regulations designed to ensure the safety of vehicle occupants, including children. Viewed in context, the 1989 amendments permitting automobile manufacturers to install either Type 1 or Type 2 belts in the rear inboard seats are entirely consistent with a broader child-safety policy the agency adopted years earlier. Beginning in 1980, NHTSA required all child restraint devices to be capable of being secured solely by means of Type 1 belts, and further determined that the safest location for a child restraint is a rear center seat.

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[3] NHTSA distinguishes between "outboard" seating positions, or seats located "less than 12 inches from the innermost point on the inside surface of the vehicle," 49 C.F.R. § 571.3, and "inboard" seating positions, seats located more than 12 inches away. For purposes of FMVSS 208, NHTSA defines a "rear outboard designating seating position" to include any "outboard designated seating position * * * that is rearward of the front seat(s), except any designated seating position adjacent to a walkway that is located between the seat and the near side of the vehicle and is designed to allow access to more rearward seating positions." 49 C.F.R. § 571.208, S4.1.4.2(c).

For years, NHTSA used FMVSS 208, 210, and 213 to implement this child-safety policy. The regulations worked in tandem. FMVSS 213 established design and performance requirements for child restraint systems, along with a rigorous testing regime to evaluate those systems. Following extensive review over nearly a decade, NHTSA decided in 1980 to require that all child restraint devices be capable of installation with only a Type 1 seatbelt. NHTSA's regulation reflected its considered judgment that standardizing and simplifying the means of installation of child restraint devices would promote their use, reduce their misuse, and help keep small children safe.

By the time the FMVSS 213 revision became final in 1980, NHTSA had further concluded that the safest location for a child restraint device was in the rear center or inboard seat of the vehicle. As part of a final rule amending FMVSS 213, NHTSA required all instructions accompanying child safety seats to state clearly that the rear center seating position was the safest place to put a child seat.

Implementing this policy, NHTSA in 1985 revised 213's companion regulation, FMVSS 210, to require that the owner's manual of every vehicle include a statement explaining that child restraint devices were designed to be capable of being secured using Type 1 lap belts and ideally should be placed in the rear center seating position.

FMVSS 208 reflected this same child-safety policy. Prior to 1989, FMVSS 208 permitted Type 1 seatbelts in all rear seating positions. In 1989, NHTSA changed the standard to require Type 2 belts in rear outboard seats, but pointedly refused to require Type

2 belts in rear center seats. Instead, and in keeping with its policy of promoting child-safety seat use in the rear center seats, the agency preserved the manufacturer's option to use either Type 1 or Type 2 belts there—even as NHTSA continued to tell parents that those seats were the safest place for child safety devices. Indeed, as late as 1997, NHTSA observed that child safety seats were designed to be secured with a Type 1 belt, and affirmatively urged parents to place those safety seats in the rear center seating position.

ARGUMENT

NHTSA'S 1989 RULE AUTHORIZING LAP-ONLY BELTS IN REAR CENTER SEATS WAS PART OF A COMPREHENSIVE CHILD-SAFETY POLICY AIMED AT PROMOTING THE USE OF CHILD RESTRAINTS IN THE SAFEST SEATING POSITION.

FMVSS 208 is part of a cluster of safety regulations that include the critical objective of protecting small children riding in automobiles. Under FMVSS 213, NHTSA adopted a comprehensive policy to promote child safety by promoting the use of child restraint devices. As part of this policy, the agency required a standardized means of installing child safety seats—with Type 1 belts—and also advised parents and other caregivers that the placement of child restraints in rear inboard positions was safest. The 1989 revisions to FMVSS 208 did not alter, but were in fact fully compatible with this policy.

A. Background on FMVSS 213, the Child Restraint Standard

FMVSS 213 is NHTSA's child restraint standard.

See 49 C.F.R. § 571.213. The express purpose of FMVSS 213 is "to reduce the number of children killed or injured in motor vehicle crashes." *Id.* § 571.213, S2.

FMVSS 213 establishes both design and performance requirements for child restraint systems. It requires dynamic testing in which the child restraint and a test dummy are crashed into a frontal barrier and subjected to a rapid change in velocity. "The child restraint must manage the force from the simulated crash so that the forces imparted to the dummy are within tolerable limits." NHTSA, 67 Fed. Reg. 21806, 21812 (2002). The FMVSS 213 crash testing "involv[es] a 30 mph velocity change, which is representative of a severe crash." *Id.* at 21809. Indeed, the "30 mph change in velocity is more severe than approximately 98 percent of the frontal impact crashes nationwide." NHTSA, 68 Fed. Reg. 37620, 37640 (2003).

Because FMVSS 213 and the testing it requires are rigorous, FMVSS 213-compliant child restraints "are the most effective vehicle safety measure available for children." NHTSA, 72 Fed. Reg. 65804, 65805 (2007). As NHTSA has recognized:

> When used, child restraints are highly effective in reducing the likelihood of death and/or serious injury in motor vehicle crashes. NHTSA estimates * * * that for children less than one-year-old, a child restraint can reduce the risk of fatality by 71 percent when used in a passenger car and by 58 percent when used in a pickup truck, van, or sport utility vehicle (light truck). Child restraint effectiveness for children between the

> ages 1 to 4 years old is 54 percent in passenger cars and 59 percent in light trucks.

NHTSA, 68 Fed. Reg. at 37622 (citing Hertz, *Revised Estimates of Child Restraint Effectiveness*, NHTSA Research Note (Dec. 1996)).

"The rate of effectiveness for infants in child safety seats in passenger cars means that 71 percent of infants in passenger cars who would die without a child safety seat would survive the crash if they were restrained in a child safety seat." NHTSA, Research Note, Traffic Safety Facts: Lives Saved Calculations for Infants and Toddlers, DOT HS 809 778 (March 2005). *See also* Kahane, An Evaluation of Child Passenger Safety: The Effectiveness and Benefits of Safety Seats, NHTSA Report No. DOT HS 806 890 (Feb. 1986) ("[T]he preliminary conclusion is that all types of correctly used seats reduce fatalities by close to 71 percent and hospitalizations by close to 67 percent.").

FMVSS 213 is by no means a merely "minimal" standard. As noted, FMVSS 213 testing simulates a severe crash, and FMVSS 213-compliant child restraints are highly effective in preventing death or serious injury. To be sure, the Safety Act states that each FMVSS is "a minimum standard for motor vehicle or motor vehicle equipment performance." 49 U.S.C. § 30102(a)(9). But they are minimum standards in the sense that they are *mandatory* standards that manufacturers must meet or surpass. As NHTSA has explained:

> Minimum performance standards do not equate with "minimal" performance standards * * * The word "minimum" in the statutory definition

> of motor vehicle safety standards * * * does not refer to the substantive content of the standards but rather to their legal status—that the products covered must not fall short of them.

41 Fed. Reg. 2391, 2392 (1976). Indeed, under the Safety Act, every FMVSS must achieve a standard of performance for motor vehicles and motor vehicle equipment sufficient to protect "against unreasonable risk of death or injury in an accident." 49 U.S.C. § 30102(a)(8).

B. In the 1980s, NHTSA Adopted the Policy That All Child Restraints Must Be Capable of Being Installed Solely With a Type 1 Seatbelt and Encouraged the Installation of Child Restraints in Rear Inboard Seats.

NHTSA's predecessor, the National Highway Safety Bureau, issued the first version of FMVSS 213 in March 1970, with an effective date of January 1, 1971. *See Motor Vehicle Safety Standard No. 213; Child Seating Systems*, 35 Fed. Reg. 5120 (1970). From the outset, the agency recognized that "[t]he safe performance of a child seating system depends, in large measure, on its proper installation and use." *Id.* at 5120. It also recognized that "[t]he method used to attach a restraint device to the motor vehicle is obviously critical to its safe performance." *Id.* at 5121.

With these considerations in mind, the agency decided that child restraints must be anchored with vehicle seatbelts. *See id.* ("Because seat belts are engineered, manufactured, and installed for the specific purpose of restraining vehicle occupants, and their value for that purpose has been established,

* * * each child seating system must be designed and constructed so that it will be restrained by a seat belt assembly when the system is properly installed."). The first version of FMVSS 213 provided that child restraint systems must be capable of being secured "by a Type 1 or Type 2 seat belt assembly as defined in Federal Motor Vehicle Safety Standard No. 209." *Id.* at 5122 (quoting FMVSS 213, S4.4(b)).

In 1974, NHTSA proposed to revise FMVSS 213. *See* 39 Fed. Reg. 7959 (1974). One of the proposed revisions would have allowed child restraints to be capable of being secured by Type 1 or Type 2 seatbelts or by "belts or belt extensions provided by the restraint manufacturer, if specified belt performance requirements are met." *Id.* at 7960.

NHTSA did not, however, adopt this contemplated revision which would have expanded the list of permissible installation methods. After further study, the agency moved in the opposite direction: it decided in the late 1970s that all child restraint systems must be capable of being anchored solely with Type 1 seatbelts.

In a 1978 notice of proposed rulemaking, NHTSA proposed a new version of FMVSS 213 that would require all child restraint systems to be capable of installation solely with Type 1 seatbelts. *See* 43 Fed. Reg. 21470, 21475 (1978) ("All child restraints, * * * must be capable of being secured to a vehicle with a Type 1 (lap) seat belt as specified in Standard No. 209.") The proposed new version FMVSS 213 stated:

> When installed on a vehicle seat, each child restraint system, other than child harnesses, shall

> be capable of being restrained against forward movement solely by means of a Type 1 seat belt assembly * * *.

Id. at 21486 (quoting proposed FMVSS 213, S5.3.2).

NHTSA's proposed requirement that all child restraints must be capable of installation solely with Type 1 seatbelts reflected NHTSA's considered judgment that simplification of installation would reduce the misuse of child restraints and promote child safety. NHTSA noted that "a concerted effort needs to be made to reduce the problem of misuse of child restraints. Misuse substantially reduces the safety value of these restraints." *Id.* at 21471. And NHTSA reasoned that "[i]f either the attaching of restraints to vehicles or securing of children in the restraints becomes overly complex, the already substantial problem of misuse could be greatly exacerbated." *Id.*

NHTSA concluded that requiring all child restraints to be capable of installation through a uniform, standardized method of installation was critical to avoid misuse:

> Standardization of the means of anchoring a child restraint to a vehicle is vital to prevent misuse. By requiring all restraints to be attachable to vehicle seats by the vehicle seat belt, consumers will be assured of a uniform method of attaching the restraint and there will be less confusion regarding that aspect of use.

Id. at 21472.

NHTSA adopted the new version of FMVSS 213 in December 1979, with an effective date of June 1,

1980. *See* 44 Fed. Reg. 72131 (1979). This 1980 version of FMVSS 213 included the new requirement that "all child restraints be capable of being secured to the vehicle seat by a lap belt." *Id.* at 72136. *See also id.* at 72149 (publishing FMVSS 213, S5.3.2).

NHTSA reiterated that standardizing the means of installation of child restraint systems—by requiring all child restraints to be capable of being installed solely by Type 1 belts—was important to achieve proper use of child restraints. *See id.* at 72136 ("Standardizing all restraints by requiring them to be capable of being attached by a lap belt is an important way to prevent misuse."). During this time period, as NHTSA noted in 1984, "most child restraints are designed to be used only with lap belts." 49 Fed. Reg. 15241, 15241 (1984).

By the time of the 1980 revision to FMVSS 213, NHTSA had also concluded that the safest location for a child restraint was a rear center seat. In its 1978 notice of proposed rulemaking, NHTSA proposed that the instructions accompanying child restraints should "be required to state that the center rear seating position in passenger cars is the safest seating position and that child restraints should therefore be installed in that position." 43 Fed. Reg. at 21476. Adopting the proposal in December 1979, NHTSA explained that "[a]ccident data have consistently shown that the occupants in the rear seat are safer than occupants in the front seat. The same data show that the center rear seating position is the safest seating position in the rear seat." 44 Fed. Reg. at 72137. Thus, as of 1980, NHTSA required the manufacturer's instructions for installing a child restraint to state that "the rear

center seating position is the safest seating position in most vehicles for installing a child restraint system." *Id.* at 72150 (quoting FMVSS 213, S5.6.1).

The twin NHTSA policies expressed in the 1980 version of FMVSS 213—that all child restraints should be capable of being installed solely with a lap belt and that the rear center seating position is the safest place for a child restraint—were also expressed during the mid-1980s in NHTSA rulemaking under FMVSS 210, which governs seatbelt assembly anchorages. *See* 49 C.F.R. § 571.210. In October 1985, NHTSA amended FMVSS 210 to require the owner's manual in every vehicle to include a section "explaining that all child restraint systems are designed to be secured in vehicle seats by lap belts or the lap belt portion of a lap-shoulder belt." 50 Fed. Reg. 41356, 41359 (1985) (quoting FMVSS 210, S6(a)). NHTSA also required a statement alerting vehicle owners "that, according to accident statistics, children are safer when properly restrained in the rear seating positions than in the front seating positions. In a vehicle with a center rear seating position, the owner's manual shall state that *the center rear position is the safest.*" *Id.* (quoting FMVSS 210, S6(b) (emphasis added)). NHTSA based this requirement on "crash tests and accident data which show that the center rear seat is safer, particularly in side impacts, than other seats." 51 Fed. Reg. 29552, 29554 (1986).[4]

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[4] Without retreating from its position that a rear center seating position is the safest location for a child restraint, NHTSA subsequently agreed with a petitioner that "depending on how a child is restrained and the severity of the crash, it is possible for a restrained child in the center rear seat of a bucket seat vehicle to strike a portion of the vehicle's interior in front

C. NHTSA's 1989 Amendment to FMVSS 208 Was Consistent With the Agency's Child-Safety Policies Under FMVSS 213.

In the 1980s, NHTSA determined that requiring a simplified and standardized means of installing child restraints—with lap-only Type 1 belts—promoted child seat use, reduced misuse, and was important to child safety. It also determined that parents and caregivers should be informed that the rear center seat is the safest place for a child restraint system. NHTSA implemented these policies through FMVSS 213.

NHTSA's 1989 revisions to FMVSS 208 were entirely consistent with these policies. The 1989 revisions permitted manufacturers to install Type 1 belts in rear center seating positions, thus ensuring the availability of that option for parents and caregivers who wished to install child restraints with such belts in those seats.

In this respect, the FMVSS 208 revisions marked no sea change. Even after the 1989 amendments, NHTSA continued to mandate, per FMVSS 213, that child restraint systems "shall be capable of being restrained against forward movement *solely* by

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of the child." 51 Fed. Reg. at 29554. For that reason, NHTSA "deleted the requirement in S6(b) [of FMVSS 210] that manufacturers state that the center rear seat is the safest seating position." *Id.* Yet FMVSS 213, S5.6.1 continued to require child restraint system instructions to state that the rear center position is safest for child restraints. *See* 51 Fed. Reg. 5335, 5339 (1986) (amending FMVSS 213, S5.6.1 to provide: "The instructions shall state that, for maximum safety protection, child restraint systems should be installed * * * in the center rear seating position in vehicles with such a seating position.").

means of a Type 1 seat belt assembly * * * ." 49 C.F.R. § 571.213, S5.3.2 (1993) (emphasis added).

Even after the 1989 amendments to FMVSS 208, NHTSA continued to adhere to its policy that child restraints should be capable of being installed solely with Type 1 belts and that the rear center seat was safest.[5] In January 1991, NHTSA stated: "Standard No. 213 requires that child restraint systems meet specific performance requirements *when only a lap belt is used*. Accident data show that child restraints meeting current requirements already provide a high level of child protection without the use of shoulder restraints." 56 Fed. Reg. 3064, 3064 (1991) (emphasis added). NHTSA explained that, "even as more rear outboard seating positions of vehicles on the road have shoulder restraints, *the safest position for the child restraint (the center rear position) will not be equipped with shoulder restraints.*" *Id.* (emphasis added). *See also* NHTSA, Child Passenger Safety Resource Manual 88 (Mar. 1992) ("[B]ased on statistical evidence, the rear seat is generally the safer place for a child to be. * * * The center rear seat is farthest from possible intrusion in side impacts.").

The next year, in May 1992, NHTSA reaffirmed its policy requiring standardization of the means of

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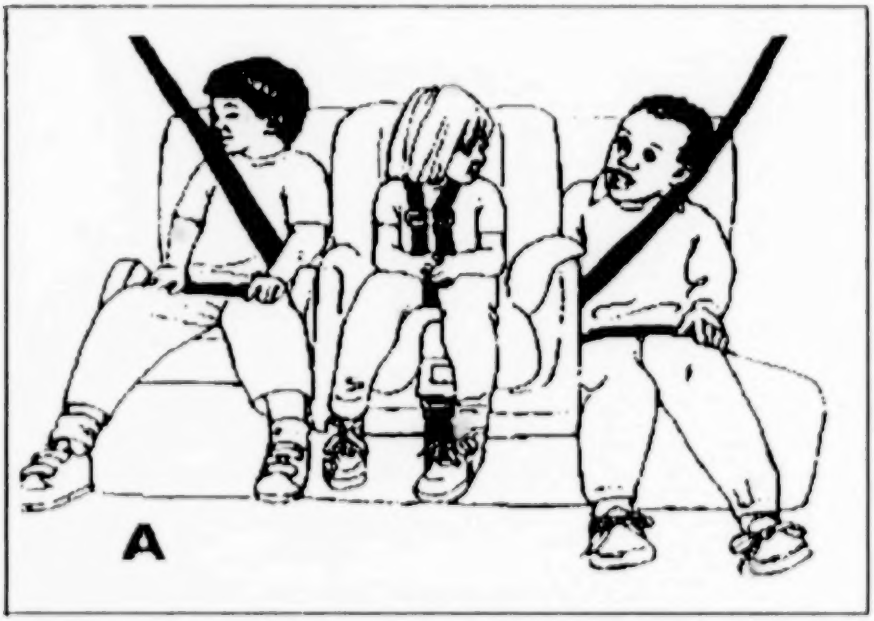
[5] In 1999, NHTSA adopted a rule requiring motor vehicles to be equipped with a new standardized method of installing child restraints with an anchorage system independent of the vehicle seatbelts. *See* 64 Fed. Reg. 10786 (1999). At the same time, NHTSA mandated that "[e]ach child restraint will also have to continue to be capable of being attached to a vehicle by way of the vehicle's belt system. This way, child restraints that have the new components can still be used on older model vehicles that do not have a child restraint anchorage system." *Id.* at 10788.

installing child restraints with Type 1 belts. *See* 57 Fed. Reg. 22682, 22685 (1992) ("Standard 213 standardizes the means for attaching child restraints by requiring all of them to be capable of being attached to the vehicle seat and providing the required protection using only the vehicle lap belt.").

In the 1990s, NHTSA continued to advise parents and caregivers that the rear center seating position—the place where a lap-only belt would be—was the safest spot for a child restraint. In a publication entitled "NHTSA Safety Tips for Using Child Restraint Systems," NHTSA included an image of a child restraint in the rear center seating position secured by a lap-only belt and advised that "[t]he center belt works best for a safety seat."



The back seat is safer than the front. The center belt works best for a safety seat. Older children should use lap/shoulder belts for best protection.

See NHTSA Safety Tips for Using Child Restraint Systems, *printed in* National Transportation Safety Board, Safety Study: The Performance and Use of Child Restraint Systems, Seatbelts, and Air Bags for Children in Passenger Vehicles, Vol. 1, Appendix A (Sept. 1996) (available at http://www.ntsb.gov/publictn/1996/ss9601.pdf).

As late as 1997, NHTSA observed that "[c]hild seats are generally designed to attach to a vehicle by means of the vehicle's lap belt system" and confirmed that "child seats provide high levels of safety when correctly attached to a standard vehicle seat assembly with only a lap belt." 62 Fed. Reg. at 7859.

NHTSA's emphasis during the 1990s on the use of Type 1 lap-only belts to secure child restraints in rear center seats repudiates the Government's suggestion that NHTSA would have been perfectly happy if manufacturers had *immediately* switched to Type 2 belts in 1989. Instead, the regulatory history underscores that NHTSA intended to give manufacturers the genuine option of installing either a Type 1 or Type 2 belt for the rear inboard seats in view of the unique safety concerns presented by small children and child restraints.

CONCLUSION

For the foregoing reasons, the judgment of the California Court of Appeal should be affirmed.

Respectfully submitted,

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